

*United States Court of Appeals
for the Second Circuit*



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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 75-1331, 75-1332

UNITED STATES OF AMERICA, APPELLEE

v.

CIRO R. RICCARDI and
RONALD GIGLIOTTI, APPELLANTS

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE

ISSUES PRESENTED

1. Whether there was sufficient evidence before the grand jury to support the indictment of defendant Gigliotti (G. Br. ^{1/} Point I).
2. Whether the evidence was sufficient to support defendants' convictions (R. Br. Point III: G. Br. Point II).^{2/}
3. Whether an F.B.I. Agent's statement in the jury's presence that he was assigned to the Bureau's Organized Crime Division requires reversal of defendants' convictions despite the trial court's curative instruction (R. Br. Point I; G. Br. Point III).

1/ "G. Br." refers to defendant Gigliotti's brief.

2/ "R. Br." refers to defendant Riccardi's brief. In Point II of his brief Gigliotti adopts Riccardi's arguments.

4. Whether the trial judge's limiting the defense's cross-examination of a government witness and his remarks to the jury explaining that action constitute reversible error (R. Br. Point II: G.Br. Point III).

STATUTES INVOLVED

18 U.S.C. 894 provides in pertinent part:

(a) Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means

(1) to collect or attempt to collect any extension of credit, or
(2) to punish any person for the non-payment thereof,
shall be fined not more than \$10,000 or imprisoned not more than 20 years, or both.

18 U.S.C. 2 provides in pertinent part:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of New York, defendants were convicted of having collected and having attempted to collect an extension of credit through the use of violence and threats of violence,
3/
in violation of 18 U.S.C. 894. Defendant Riccardi was sentenced

3/ Defendants were convicted on Count II of a two count indictment. (R.A. 5A; G.A. 6-7) ("R.A." refers to the Appendix filed by defendant Riccardi, "G.A." refers to the Appendix filed by defendant Gigliotti). Count I charged only defendant Riccardi with making an extortionate extension of credit in violation of (Footnote cont'd.)

to 20 years' imprisonment subject to a psychiatric study and modification of sentence as prescribed by 18 U.S.C. 4208(c).

Defendant Gigliotti was sentenced to 8 years' imprisonment subject to 18 U.S.C. 4208(a) (R.A. 3A; G.A. 4).

4/
In May 1971, Riccardi was introduced to one Frank DiPalma, the extortion victim, as someone who could lend money. DiPalma asked Riccardi for \$1,000, and Riccardi agreed to make the loan 5/ (Tr. 19-20, 207-209, 221; G.A. 49-50, 236-238, 250). A few days later Riccardi gave DiPalma \$1,000 and told him that he had to pay \$50 "vig" (i.e. interest) every week until the entire \$1,000 principal was repaid (Tr. 20-22, 218; G.A. 50-52, 247).

DiPalma, who could not afford to repay the \$1,000, paid the weekly interest of \$50 for approximately three months. During this period DiPalma's financial condition continued to deteriorate, and he obtained a further \$1,500 loan from Riccardi, who increased the weekly interest payment to \$125 (Tr. 23; G.A. 53). DiPalma paid the \$125 weekly interest for the next 5-6

3/ Footnote cont'd.)
18 U.S.C. 892. The jury returned a verdict of acquittal on this count.

4/ DiPalma testified for the government at trial.

5/ "Tr." refers to the trial transcript. The pagination is consecutive until the proceedings of May 27, 1975, afternoon session, when the numbering begins again with page 1. That second part of the transcript will be referred to as "Tr. II".

months and then obtained an additional \$1,000 loan from Riccardi. The weekly interest rose to \$175 (Tr. 24-28; G.A. 54-58).

For the next several months DiPalma made \$175 weekly interest payments to Riccardi. During this interval, in November or December, 1971, DiPalma told Riccardi that he was having difficulty meeting the \$175 payments. Riccardi offered to renegotiate the loan upwards from \$3,500 to \$4,800 with weekly payments of \$100 to be applied against the principal rather than as interest. When DiPalma stated he would have trouble making payments of even \$100 a week, Riccardi told him: "your head will get busted; your legs will get broken" (Tr. 397-400).

Sometime in spring, 1972, DiPalma could no longer make his payments. When he advised Riccardi of his inability to pay, Riccardi lowered the weekly interest to \$150 (Tr. 33-37; G.A. 63-67). In the weeks following, DiPalma failed to make some of his scheduled payments to Riccardi (Tr. 37-38; G.A. 67-68). Riccardi went to DiPalma's home several times and threatened him with bodily injury if he did not make his payments (Tr. 449-452). On another occasion DiPalma, who had been hiding from Riccardi, was pulled over near a cemetery by a car occupied by Riccardi and Gigliotti as he was driving home from work (Tr. 40, 402-403; G.A. 70). After asking DiPalma where he had been, Riccardi warned that if he did not get paid, he would put DiPalma in the hospital. Gigliotti said to DiPalma:

Look. . . It doesn't pay for you to get hurt . . . Why don't you pay him? [sic] or do what you can to pay him? . . . Go ahead and go. (Tr. 41; G.A. 71).

About two days later DiPalma tried to stall for time by giving Riccardi a bogus \$900 check (Tr. 42; G.A. 72).

The next day, May 17, 1972, DiPalma, went to the police and described his dealings with Riccardi (Tr. A31-A32; 43-47; G.A. 73-77). That night two police officers accompanied DiPalma home and stationed themselves inside his apartment. At 11:00 p.m. three men pounded on DiPalma's door and demanded payment. DiPalma did not answer, and the men left. DiPalma recognized one of them as Riccardi (Tr. A33-A39; 47-48, 130, 158; G.A. 77-78, 159, 187).

One week later DiPalma encountered Riccardi outside his apartment. Riccardi asked DiPalma where he had been and then began to strike him until DiPalma's wife and a friend intervened to stop the beating (Tr. 49-52, 443-444, 541-542; G.A. 79-82).

Immediately after this incident Mrs. DiPalma telephoned the F.B.I. and related what had occurred (Tr. 52, 542-543; G.A. 82). After speaking with federal agents, DiPalma agreed to cooperate with them in their investigation of the extortion scheme (Tr. A94-A95, 52-53; G.A. 82-83).

The next encounter between DiPalma and Riccardi occurred on June 2, 1972, and was witnessed and photographed by two F.B.I.

agents, who also listened to and recorded the conversations which occurred through the use of a concealed listening device worn by DiPalma (Tr. A95-A96, A97, A105-A108, 52-53; Gov't. Ex. 2A-2D, 3; G.A. 82-83). After having been dropped off by the F.B.I. on Avenue X in Brooklyn, DiPalma met Gigliotti and asked for Riccardi. Gigliotti told DiPalma where he was to meet Riccardi, and the two parted company (Tr. 53-54, 64-65; G.A. 83-84, 94-95, 402-406). After DiPalma walked to the location specified, Riccardi and Gigliotti drove up. After Riccardi searched DiPalma, the three men began to talk. (Tr. 65, 136-137; G.A. 95, 165-166). Riccardi instructed Gigliotti with reference to DiPalma
6/
(Add. 6; G.A. 407):

Ronnie, you stand right next to him-
if he does anything shoot him right
in his fucken [sic] head. 7/

Riccardi and Gigliotti demanded the money DiPalma owed, and DiPalma said he did not have it. Defendants warned DiPalma that he would be better off dead and that he was looking to die

6/ "Add." refers to the addendum to this brief, which contains an accurate version of the transcript of the tape-recorded conversation between defendants and DiPalma, copies of which were furnished to the jury when the recording itself was played in the courtroom. The transcript of the recording in Gigliotti's appendix (G.A. 402-417) contains material inaccuracies (See n. 7, infra).

7/ Gigliotti's Appendix (G.A. 407) omits Riccardi's direct reference to Gigliotti as "Ronnie."

(Add. 8, 13, 16; G.A. 410, 414, 416) Riccardi also told DiPalma that his reluctance to get in their car wou'd not save him because "[i]f anything we'll come and get you in the street . . ." (Add. 8; G.A. 409).

ARGUMENT

I

THERE WAS SUFFICIENT EVIDENCE BEFORE THE GRAND JURY TO SUPPORT THE INDICTMENT OF GIGLIOTTI

DiPalma testified before the grand jury concerning his dealings with defendants and the threats against him. During his appearance before the grand jury on May 22, 1972 DiPalma related how Riccardi and Gigliotti (whose name DiPalma did not know) stopped his car rear the cemetery and how Riccardi had then threatened him. DiPalma described Gigliotti as "a white male, approximately forty years of age, Jewish looking with light brown hair, with receding hairline. . ." (G.A. 14). In his June 13, 1972, grand jury appearance DiPalma described his June 2, 1972 meeting with Riccardi and Gigliotti (whose name he still did not know) which was recorded and viewed by F.B.I. agents. DiPalma stated that Riccardi's companion (Gigliotti) arranged the meeting and stood behind him when Riccardi said "If he moves, put a bullet in him" (G.A. 33-37).

DiPalma never identified Gigliotti by name before the

grand jury. The F.B.I. identified Gigliotti through photographs taken during surveillance on June 2, 1972. As set forth by Strike Force Attorney Alan Naftalis in the government's response to Gigliotti's motion to dismiss the indictment (G.A. 394-400), an agent relayed Gigliotti's identity to Naftalis, who in turn told the grand jury of the identification. Naftalis asked the grand jury if it wished to question the agent who made the identification, but the grand jury indicated that was unnecessary although the hearsay nature of the identification was explained to it (G.A. 395-396, 398-399).

Defendant Gigliotti contends that because his identity was established by hearsay there was insufficient evidence before the grand jury to support his indictment. However, in Costello v. United States, 350 U.S. 359 (1956) the Supreme Court ruled that defendants may not challenge indictments on the ground that they are supported by inadequate or incompetent evidence and sustained an indictment based solely on hearsay. The Costello decision emphasized the grand jury's traditionally broad powers of investigation and its freedom from the technical procedural and evidentiary rules which govern the conduct of criminal trials. 350 U.S. at 362.

The Court held that "neither the Fifth Amendment nor any other constitutional provision prescribes the kind of evidence

upon which grand juries must act. 350 U.S. at 362. The Court stated (*id.* at 363):

If indictments were to be held open to challenge on the ground that there was inadequate or incompetent evidence before the grand jury, the resulting delay would be great indeed. The result of such a rule would be that before trial on the merits a defendant could always insist on a kind of preliminary trial to determine the competency and adequacy of the evidence before the grand jury. This is not required by the Fifth Amendment. An indictment returned by a legally constituted and unbiased grand jury (footnote omitted], like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits. The Fifth Amendment requires nothing more.

Accord: Lawn v. United States, 355 U.S. 339, 349 (1958); United States v. Bentvena, 319 F.2d 916, 947 (2nd Cir. 1963), cert. den., 375 U.S. 940; United States v. Ramsey, 315 F.2d 199, 199-200 (2nd Cir. 1963), cert. den., 375 U.S. 883. See also United States v. Calandra, 414 U.S. 338, 343-345 (1974); Blair v. United States, 250 U.S. 269, 282 (1919).

In applying the Costello decision, this Court has stated that a facially valid indictment returned by a legally constituted, unbiased grand jury, will be upheld if there is "some competent evidence" to support it. United States v. Schwartz, 464 F.2d 499, 511 (2nd Cir. 1972), cert. den., 409 U.S. 1009; United States v. Tane, 329 F.2d 848, 853-854 (2nd Cir. 1964). A motion to quash or dismiss such an indictment on the ground of insufficient evidence is addressed to the sound discretion of the trial

court and that court's decision should not be reversed unless there has been an abuse of that discretion. United States v. Schwartz, supra; United States v. Tane, supra.

In the instant case the district court did not abuse its discretion in ruling that there was sufficient competent evidence before the grand jury to support the indictment of Gigliotti. DiPalma's testimony placed a companion of Riccardi's whose description matched Gigliotti's at the cemetery on May 15, 1972, and at the meeting on June 2, 1972. DiPalma described how that person arranged the location of the June 2 meeting and threatened him with violence if he failed to make the loan payments (G.A. 8/17-20). Finally, the Grand Jury was apprised that through

8/ In arguing (G. Br. p. 16) that the grand jury must have believed that the man at the cemetery was not the same person who accompanied Riccardi at the meeting on June 2, Gigliotti misconstrues two questions the prosecutor asked DiPalma before the grand jury. The questions and answers were as follows (G.A. 34):

Q: Have you talked about that guy [Riccardi's companion on June 2] at all today? Is he one of the unknown persons you referred to in your answers, either the guy who used to get the money at the luncheonette or either of the two men inside the Cycle Shop?

A: No, he's not.

Q: This is a new person?

A: A new person.

Clearly DiPalma's responses simply indicate that Riccardi's companion at the June 2 meeting was not one of the men at the luncheonette or the cycle shop and did not imply that he was not the same person who was with Riccardi at the cemetery. In any event, even if the grand jury only considered Gigliotti's participation in the June 2 meeting, which was established by the F.B.I. surveillance, that was sufficient to support the indictment.

surveillance photographs the F.B.I. had identified this other participant in the June 2 meeting as Gigliotti. Here, unlike the situation in United States v. Estepa, 471 F.2d 1132 (2nd Cir. 1972), the grand jury was not misled by the prosecutor. ^{9/} To the contrary, government counsel specifically advised the grand jury that his information as to Gigliotti's identity was not first-hand (i.e. he had received it from the F.B.I.) and he explicitly offered to produce the agent who made the identification if the grand jury so desired (G.A. 396, 398-399). The grand jury declined this offer, as was their prerogative. As the Supreme Court ruled in Costello v. United States, supra, 350 U.S. at 362: "grand jurors * * * [are] free to make their presentations or indictments on such information as they deemed satisfactory." (emphasis supplied).

In United States ex rel Curtis v. Warden of Green Haven Prison, 463 F.2d 84 (2nd Cir. 1972), a state grand jury returned an indictment listing a defendant only as Henry "Doe." Subsequently, authorities identified "Doe" and pursuant to state law

^{9/} In United States v. Harrington, 490 F.2d 487, 489-490 (2nd Cir. 1973), this Court stated that Estepa did not broadly modify the Costello rule which permits the use of hearsay in the presentation of evidence to the grand jury. Rather, it was directed towards slipshod presentations by prosecutors, i.e. the presentation of hearsay testimony by law enforcement officers in such a manner as to lead the grand jury to believe the testimony is based on first-hand knowledge. Thus, in that case, hearsay testimony by the agent was held to have been properly presented to the grand jury since it could not have misled the jury into believing it was receiving first-hand knowledge.

amended the indictment to reflect the defendant's true name. This Court upheld the indictment even through the defendant's ^{10/} actual identity was never made known to the grand jury. In light of Curtis, the indictment is plainly valid here, where Gigliotti's name was actually presented to the grand jury which was then given the option of receiving more evidence as to the ^{11/} identification.

II

THE EVIDENCE AT TRIAL WAS SUFFICIENT TO SUPPORT DEFENDANTS' CONVICTIONS

Riccardi and Gigliotti both contend that the evidence presented at trial was insufficient to support their convictions. Riccardi principally attacks the credibility of DiPalma's testimony while Gigliotti asserts that there was no evidence besides his presence at the time of the offense to support his conviction

10/ While it is true, as noted by Gigliotti (G. Br. p. 25, n. 13), that Curtis was a habeas corpus case involving a state prosecution, and that the Grand Jury Clause of the Fifth Amendment is not applicable to the states, this Court recognized in Curtis that the equal protection clause must be satisfied by the state procedure, and assumed arguendo that the procedure would have to comport with due process. (Id. at 87).

11/ It is immaterial that Strike Force Attorney Naftalis' grand jury statements concerning Gigliotti's identity were not recorded. There is no requirement that the prosecutor's statements before the grand jury be recorded, United States v. Peden, 472 F.2d 583 (2nd Cir. 1973), or, for that matter, that any of the proceedings before the grand jury be recorded. United States v. Cramer, 447 F.2d 210, 214 (2nd Cir. 1971), cert. den., 404 U.S. 1024.

as an aider and abettor.

In passing upon a contention that the evidence is insufficient to support the verdict, the evidence must be viewed in the light most favorable to the government. Glasser v. United States, 315 U.S. 60, 80 (1942); United States v. Johnson, 513 F.2d 819, 821 (2nd Cir. 1975); United States v. Wisniewski, 478 F.2d 274, 277 (2nd Cir. 1973). Moreover, the credibility of witnesses is strictly a matter for the jury's determination. See United States v. Weinstein, 452 F.2d 704, 713-714 (2nd Cir. 1971). With these general principles in mind, we turn to the evidence presented against each defendant.

Riccardi

Riccardi asserts that DiPalma's trial testimony was so contradictory that the jury was not entitled to credit any portion of it. However, as noted above, the determination of a witness' credibility is solely a matter for the jury. See United States v. Weinstein, supra, 452 F.2d at 713-714. Here DiPalma's testimony, which the jury obviously believed, established that Riccardi violated 18 U.S.C. 894 by using actual and threatened violence in an attempt to collect the loan payments. Furthermore this testimony was corroborated by Mrs. DiPalma (Tr. 541-542), Sergeant Oleska (Tr. A-33), F.B.I. Agent Ruffels, who viewed, photographed, and listened to the meeting of June 2, 1972 (Tr. A95-A96, A105-A106; Gov't. Ex. 2A-2D), and the tape

recording of the meeting of June 2, which was played to the jury (Tr. 69; Gov't. Ex. 3).

Gigliotti

12/

Gigliotti, who was convicted as an aider and abettor, contends that the government failed to prove that he participated in the extortion.

In Nye & Nissen v. United States, 336 U.S. 613 (1949), the Supreme Court set forth the requirements for a finding of aiding and abetting (id. at 619):

In order to aid and abet another to commit a crime it is necessary that a defendant "in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed." [Citation omitted]

See United States v. Manna, 353 F.2d 191, 192 (2nd Cir. 1965), cert. den., 384 U.S. 975. An abettor's participation can be proven by circumstantial evidence, and in determining whether there has been such participation the jury is entitled to consider the evidence as a whole. United States v. Wisniewski,

12/ Count II of the indictment under which Gigliotti was convicted did not charge him as an aider and abettor under 18 U.S.C. 2. However, an aider and abettor is properly charged as a principal. United States v. Tropiano, 418 F.2d 1069, 1083 (2nd Cir. 1969), cert. den., 397 U.S. 1021; see also United States v. Aldridge, 484 F.2d 655, 661 (7th Cir. 1973), cert. den., sub nom. Good v. United States, 415 U.S. 921 and Perrault v. United States, 415 U.S. 922.

supra, 478 F.2d at 279. With regard to the nature of those acts which can support an inference of participation, this Court, in United States v. Ragland, 375 F.2d 471, 478 (2nd Cir. 1967), cert. den., 390 U.S. 925, stated:

Mere presence at the scene of an offense when the accused is likely to be aware that an offense is to occur may be sufficient to base an inference of complicity when such presence either facilitates [citation omitted] or permits [citation omitted] the unlawful act. An otherwise innocent act of "relatively slight moment," [citation omitted], may, when viewed in the context of surrounding circumstances, justify an inference of complicity, [citation omitted], and the fact that the defendant maintained a silence throughout, while often relevant to his awareness and role in the transaction, does not conclusively negate his participation in it. [citation omitted].

Here it is unnecessary to infer Gigliotti's complicity from his mere presence during the extortion attempts, since his own actions and words showed him to be an active participant. As detailed above (see Statement, supra) Gigliotti accompanied Riccardi on May 15, 1972, when they stopped DiPalma's car. In Gigliotti's presence Riccardi threatened DiPalma with bodily harm if he did not pay up and Gigliotti urged DiPalma to pay to avoid getting hurt (Tr. 40, 41, 402-403; G.A. 70-71). Later, on June 2, 1972 Gigliotti confirmed his role in the attempted collection of the loan payments by telling DiPalma that if DiPalma had the money he (Gigliotti) would have taken it. He

also volunteered to drive DiPalma to meet Riccardi but DiPalma chose to walk. (Add. 1-2; G.A. 402). After DiPalma arrived at the location indicated by Gigliotti, Gigliotti and Riccardi drove up in the same car, (Tr. 65, 136-137; G.A. 95, 165-166). Gigliotti's role in the ensuing encounter was anything but passive. In the course of the conversation Riccardi stated to Gigliotti (Add. 6; G.A. 407):

Ronnie, you stand right next to him - if he does anything shoot him right in his fucken [sic] head13/

Gigliotti, who stood behind DiPalma, did nothing to disassociate himself from this statement. Later in the conversation Gigliotti told DiPalma (Add. 8; G.A. 410):

The way you speak, you're better off dead, I'm telling now - 14/

Thus, evidence clearly demonstrated that Gigliotti, rather than being a bystander, actively aided and abetted Riccardi in attempting to collect the loan payments through threats of 15/ violence.

13/ See n. 7 supra.

14/ The version of the transcript of the tape recordings in Gigliotti's Appendix (G.A. 410) erroneously attributes this remark to Riccardi.

15/ The trial court's charge, not challenged here by Gigliotti, clearly and correctly sets forth the essential elements of the crime of aiding and abetting (C. 15-17) ("C" refers to the transcript of the court's charge given on May 28, 1975). In the course of its charge the court thoroughly covered the elements of knowledge of the crime and intent to facilitate it and advised the jury that mere presence at the scene was not sufficient to convict.

III

AN F.B.I. AGENT'S STATEMENT IN THE JURY'S PRESENCE THAT HE WAS ASSIGNED TO THE BUREAU'S ORGANIZED CRIME DIVISION DOES NOT REQUIRE REVERSAL OF DEFENDANTS' CONVICTIONS

At the outset of Agent Ruffels' testimony on direct examination he was asked by the prosecutor what his assignment was in May, 1972. The agent answered that he was assigned at that time to the F.B.I.'s Organized Crime Division. Defense counsel immediately moved for a mistrial on the ground that this response prejudicially branded defendants as members of organized crime (Tr. A78-A81; R.A. 22A-25A). The trial court denied a mistrial and gave the jury the following cautionary instruction (Tr. A81-A82; R.A. 25A-26A):

Ladies and gentlemen, the fact that this witness may be assigned to one unit or another of the FBI is not material to your consideration of this case. I permitted him to answer the question and I see no harm in his answer as such. He is a member of the FBI. And various members of the FBI are assigned to one unit or the other. But that isn't the question for your determination.

Your function is to determine whether or not a crime had been proved in this particular case and whether that crime was committed by these defendants. And not to what division this witness may or may not have been assigned at a particular time.

Defendants assert that the agent's testimony as to his assignment irreversibly prejudiced the jury notwithstanding the cautionary instruction and that the district court erred in not declaring a mistrial. This contention, however, must fail.

In the first place, it is not clear that the testimony complained of was prejudicial. The agent's testimony made no reference to either defendant, and merely constituted an accurate statement of his organizational assignment. As the district court stated at trial (Tr. A80; R.A. 24), the mere fact that Ruffels was an F.B.I. agent in itself revealed to the jury that his job was to investigate crime. While it might have been improper for the prosecutor to have gratuitously characterized defendants as members of organized crime, no such labelling occurred here.

Assuming arguendo that the statement was prejudicial, the prejudice was minimal and does not necessitate reversal of the convictions. In determining whether reversal is required, three factors must be considered: (1) the degree of prejudice created in the jurors' minds, (2) the quality of the trial court's corrective actions, and (3) the strength of the government's case. United States v. Pfingst, 477 F.2d 177, 188 (2nd Cir. 1973), cert. den., 412 U.S. 941.

The agent's statement regarding his assignment, which did not refer to defendants, was at most slightly prejudicial.

Surely it was less damaging than prejudicial statements in other cases where this Court has refused to reverse convictions on grounds similiar to those asserted here. For example, in United States v. Angelet, 231 F.2d 190 (2nd Cir. 1956), cert. den., 351 U.S. 952, a narcotics agent testified for the government that the defendant was Number 7 on the Narcotics Bureau's list of major violators. Unlike the present case, this reference was specifically directed at the defendant and the agency's estimation of his criminal status. Yet in light of the district court's curative action in that case, the conviction was sustained. See also, United States v. Rivera, 496 F.2d 952, 953 (2nd Cir. 1974); United States v. Bynum, 485 F.2d 490, 503 (2nd Cir. 1973), vacated on other grounds 417 U.S. 903, on remand 386 F. Supp. 449, affirmed 513 F.2d 533 (2nd Cir. 1975), cert. den., Nos. 74-1445 and 74-6411, November 10, 1975; United States v. Sawyer, 469 F.2d 450, 453 (2nd Cir. 1972); United States v. Stromberg, 268 F.2d 256, 269-270 (2nd Cir. 1959), cert. den., 361 U.S. 863 (where during a narcotics trial the prosecutor gave a public speech on the danger of organized crime and the Mafia and the role of the Bureau of Narcotics in the fight against such crime, that was reported and read by some jurors). It must be emphasized that the record does not support the allegation (R. Br. pp. 20-21) that the statement at issue must have been intentionally elicited

by the prosecutor. The question asked by the prosecutor, although construed by the agent as a query concerning his assigned unit, is equally susceptible to the interpretation that the prosecutor sought an answer concerning the particular case the agent was working on in May, 1972.

Moreover, any prejudice that may have occurred was negated by the district judge's curative instruction. As the Supreme Court noted in Bruton v. United States, 391 U.S. 123, 135 (1968):

Not every admission of inadmissible hearsay or other evidence can be considered to be reversible error unavoidable through limiting instructions; instances occur in almost every trial where inadmissible evidence creeps in, usually inadvertently.

See also Frazier v. Cupp, 394 U.S. 731, 735 (1969). The cautionary instruction given by the district court was clear and direct. It is not to be assumed that the jury disregarded those instructions. Opper v. United States, 348 U.S. 84, 95 (1954). Indeed, the jury's verdict of acquittal on Count I indicates that it conscientiously weighed the evidence unaffected by irrelevant considerations.

Finally, as demonstrated above (Argument II) the case against defendants was strong, including as it did eyewitness testimony, physical evidence and particularly the tape recording of the meeting of June 2, 1972.

Thus, applying the 3-pronged test enunciated by this Court

in United States v. Pfingst, supra, there has been no error in regard to Agent Ruffels' testimony which would warrant reversal of defendants' convictions.

IV

THE TRIAL JUDGE'S LIMITING THE DEFENSE'S CROSS-EXAMINATION OF DIPALMA AND HIS REMARKS TO THE JURY EXPLAINING THAT ACTION DO NOT CONSTITUTE REVERSIBLE ERROR

During his cross-examination of DiPalma, Gigliotti's trial counsel sought to determine whether the witness had been coached by Agent Ruffels or prosecutor Naftalis during the luncheon recess on a previous day. That particular luncheon recess had been lengthened by the court so that Naftalis could keep a dentist's appointment. In spite of DiPalma's persistent denials that he had been coached, counsel continued along this line of inquiry. Eventually the district court, at a sidebar conference, asked why counsel insisted on pursuing this line of inquiry as it related to Naftalis, when defense counsel knew Naftalis had gone to the dentist during that recess (Tr. 503-514). The court then explained to the jury (Tr. 514; R.A. 83A):

The reason why I interrupted Mr. Newman's questioning is, last Thursday before lunch Mr. Naftalis asked the Court for permission to go to the dentist, that's why I adjourned earlier during the Thursday lunch hour, and Mr. Newman knows that Mr. Naftalis went to the dentist during the noon hour and yet he's persisted in asking these questions trying to create an erroneous impression in your mind. Mr. Naftalis has just

told me that he did go to the dentist during the noon hour and didn't talk to this witness.

No objection was made at trial to the court's remarks. Defendants now assert that the district court improperly limited cross-examination of DiPalma and unnecessarily disparaged defense counsel before the jury.

Regulation of the extent and scope of cross-examination lies within the discretion of the trial court, whose determination should not be reversed absent an abuse of discretion leading to prejudice or a denial of the Sixth Amendment right of confrontation. Glasser v. United States, 315 U.S. 60, 83 (1942); Alford v. United States, 282 U.S. 687, 694 (1931); United States v. Evanchik, 413 F.2d 950, 953 (2nd Cir. 1969); United States v. Bowe, 360 F.2d 1, 14 (2nd Cir. 1966), cert. den., 385 U.S. 961, and sub nom. Collier v. United States, 385 U.S. 1042. In the present case the trial court permitted the defense considerable latitude in the extensive cross-examination of DiPalma, which (including recross-examination) covered over 300 pages of the transcript and was directed at every portion of his direct examination. Moreover, as to the line of inquiry at issue here, cross-examination lasted some eight pages (Tr. 503-510) until interrupted by the court. The cross-examination was halted by the trial court only after DiPalma had repeatedly denied having been coached by either Ruffels or Naftalis during the specified recess.

Moreover, the court's explanatory statement to the jury
16/
was entirely proper. Defense counsel in his cross-examination of DiPalma, was apparently suggesting to the jury that Naftalis coached the witness at a time when Naftalis, as defense counsel knew, was at the dentist. In that context, the court exercised its duty "to insure that the trial was fairly conducted." United States v. Pellegrino, 470 F.2d 1205, 1206 (2nd Cir. 1972), cert. den., 411 U.S. 918.

Even if the court's remark was improper, it was not so prejudicial as to require reversal. The comment neither impugned defendants themselves, reflected on the strength or weakness of their defense, nor created the impression that the court believed in their guilt. Rather it was directed merely at the way defense counsel was handling one aspect of the case. See United States v. Mills, 481 F.2d 960, 963 (2nd Cir. 1973); United States v. Boatner, 478 F.2d 737, 739-740 (2nd Cir. 1973), cert. den., 414 U.S. 848; United States v. Ross, 321 F.2d 61, 66 n. 3 (2nd Cir. 1963), cert. den., 375 U.S. 894. Nor was there any continuous hostility between the court and defense counsel (Cf. United States v. Boatner, supra). In light of the strength of the government's case (see United States v. Ross, supra) and the isolated nature of the event in a trial lasting several days, any error arising from the court's comment was harmless beyond a reasonable doubt.

16/ The statements made by the trial court were directed at counsel for Gigliotti and could not have prejudiced Riccardi.

CONCLUSION

It is therefore respectfully submitted that the convictions should be affirmed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 28, 1975, copies of the Brief of Appellee, United States of America, were mailed to counsel for Appellants at the following addresses:

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ADDENDUM

Below is a partial verbatim conversation which ensued between FRANK DI PALMA, "ZERO" RICCARDI, and RONALD GIGLIOTTI, on June 2, 1972, at Brooklyn, New York:

FD: FRANK DI PALMA
Z: "ZERO"
RG: RONALD GIGLIOTTI
UN: Unintelligible

RG: What have you got - a tire under there? All right, wait a minute - I'll take you (UN) let me get my car.

FD: Why? Where do we have to go?

RG: About ten feet, about four or five blocks away - he's talking to somebody.

FD: Can't you bring him here? Cause I don't want to go riding around. I got my car broke down and everything.

RG: I'll drop you back off over here - I'll drop you back off.

FD: I don't want to

RG: (UN) He's busy - otherwise - he's busy with somebody.

FD: If he's dizzy tell him he might understand what the story is.

RG: Talking to you is like talking to nobody. I just - I hang out here - about four or five blocks away.

FD: OK. Can't you tell him to come down here?

RG: He's busy - he's talking to somebody, with somebody.

FD: (UN) When's he going to come back here?

RG: He didn't say. He just said "I'll drop you off - wait here". You got a car, I'll go with you - I don't care.

FD: My car is un - broke down - my wife and my kid is sick - I have no car; I've got absolutely nothing, nothing, not a car nothing (UN).

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RG: Alright what do you want me to (UN) I don't give a shit. I'll just tell him you can't make it.

FD: Where is this place, do you know?

RG: (UN) It's about 4 or 5 blocks up here - they were talking about something and that's why he told me to wait here.

FD: I don't want to go anywhere.

RG: Listen - We're not going to no house, there's no house, he's waiting for you outside. I don't give a fuck. It don't make no difference to me. I'll tell him you can't make it.

FD: I'm here - I don't want to travel over there. Can't you tell him I'm here? It's only right that - that if I had the money he would have met me here.

RG: If you had the money I would have taken it. That's how much he wants to see you.

FD: He's going to want to know why I can't pay him.

RG: That's your problem, right?

FD: I don't want any uh repercussions.

RG: I don't think you'll get any repercussions, there's no reason for repercussions.

FD: I don't want any repercussions Sunday - I don't want to.

RG: I tell you - I'll take you there if you want. There shouldn't be any problem.

FD: (UN) how you get down there?

RG: About 5 or 6 blocks.

FD: (UN) I'll walk down.

RG: You tell me what you want to do. If you don't want to go over there, I'll just call. Say you can't make it.

FD: What are you going to go inside somebody's house or outside the house.

RG: Outside.

FD: Outside of the house? Which way - that way or do I have to go toward the barn.

RG: About uh, about 3 or 4 blocks up and about 2 blocks up that way.

FD: I'll walk up.

RG: Alright, let's see, you want to walk it? I'll tell you which way to go.

FD: Yea, you show me the street, I know how to go

RG: It's past - you know - uh - you know where you work.

FD: Yea.

RG: Alright - it's - your coming back up this way - there's Browns - you know where Brown's is, right? Straight down Browns 3 blocks - 2 or 3 blocks.

FD: Down this street by Avenue "X".

RG: No, no, you, you, you know where Browns is - the furniture store?

FD: Browns - yea.

RG: Right - on that street 2 blocks up.

FD: Up this way.

RG: Right up that way.

FD: So that would be uh past what?

RG: Probably Striker Street or uh Striker. I know it's on the street from Browns - you walk two or three blocks up - I'll go there I'll be outside - you'll see me standing.

FD: I'll start walking up.

RG: All right.

FD: I'll walk up this way. Straight up till I get to Browns. Make a right turn.

RG: You know where Browns is now. You know where Browns is?

FD: It's the uh furniture store there.

RG: Yea. It's a big furniture store. You know where Neils is?

FD: Yea.

RG: Where the delicatessen is?

FD: Oh! Past, past the "L".

RG: That's what I'm telling you. It's on the other side of the "L".

FD: Oh. It's on past the "L" past the "L" yeah, all right. I'll start walking up that way.

RG: All right.

FD: He'll meet me outside by Neils.

RG: He will - he'll meet you wherever you want.

FD: Tell him to meet me outside of -

RG: I'll have to go get him - I'll have to go get him - you knw he's bullshitting with some guy so -

FD: That's what I mean. (UN) You can save me the trouble - it's the same thing. Can't he come down here? Gee whiz, it's the same thing as me walking up there.

RG: Go ahead - start walking down that way - walk down that way - he'll catch up with you.

FD: Walk towards the "L" down there.

(Pause while walking from the luncheonette to Neils Deli)

(FBI radio interference)

Z: How long have you been speaking to him? You want to be a cocksucker. You got my money?

FD: (UN) I got a wife - everybody else is gotta -

Z: Where's my money?

FD: What does it pay to hit? You don't hit somebody.

Z: Where's my money? You want to start in again?

FD: Because I'm trying to explain to you - I don't even have fucking job - what are you doing (Zero conduct body search). Yea, I'm loaded -

Z: I'm not looking for a gun (UN). I'm not going to hurt you - that means something got to be done - Patty - Frank, I'm telling you - sit down and read the score; let's get off the street now.

FD: How am I going to pay? That's it, to tell you the truth I ain't got it - I tried my best. I went to my sister-in-law. She can't give me no money. I don't got no pay out of here. I can't even get it. I ain't been working. I ain't got any money. That's the truth and the whole truth. I ain't got it.

Z: What am I supposed to tell these people?

FD: It ain't my fault, I don't have any fucking money. I got strapped up.

Z: It is your fault, remember how you came to me and begged me for the money every time you came. Frank, I am telling you now, you gotta pay the money.

FD: How am I going to pay?

Z: I don't know what to tell you - you got to pay. I was a nice guy with you. I can't be a nice guy with you, I gotta be a cocksucker with you. I ain't gonna be no easy guy with you.

FD: Oh I ain't gonna get hurt. Seriously boy - I took one and that's enough.

Z: You took one, you think you're right? You think you're right?

FD: I'm never gonna get hit again.

Z: You're think you're right?

FD: I ain't want to get hit again.

Z: You think your right.

FD: And then my family's got problems.

Z: Well you knew that.

FD: (UN) I told you like a man I was in trouble, I told you like I'm a man that I was broke. I told you like a man I couldn't afford it after I told you to make some kind of arrangement for me - and I told you what happened - I told you exactly what happened.

Z: Ronnie, you stand right next to him - if he does anything shoot him right in his fucken head - I'm telling you something over here - if you'd have come to me like a man and you wouldn't try to hide like a rat -

FD: I wasn't hiding.

Z: Well why didn't you come.

FD: The last two - the last two weeks I wasn't hiding - I wasn't hiding the last two weeks.

Z: Well, where were you? Why didn't you come and see me?

FD: The last two weeks I -

Z: Well, where were you?

FD: The last two weeks I was trying to get money - I've been looking all over the place to borrow money. As a matter of fact you're right. I got the books but I can't even pay - I'm behind two months on every fucken book I got - because I can't afford it anymore - I ain't got no goddamn money.

Z: You gotta pay - this is something that's out of my hands - you gotta pay - you gotta pay - uh - I'll tell like a man if you should a come - instead of hiding for three weeks - come see me - you had a come take money off me didn't you? Huh? Didn't you know how to come and take money off me? Ha - look did you come and take money off me. Huh?

FD: Yea - but meanwhile I paid you.

Z: But didn't you know how to come and take

FD: But meanwhile I paid you.

Z: Frank, I did take it into consideration but (UN)

FD: I even borrowed off Patty and Patty gave me money like that and I even tried staying.

Z: Patty's going to be held responsible for a thousand dollars - I don't want to know nothing.

FD: Why should Patty be responsible?

Z: He came and vouched for you. He's being held for a thousand dollars. I don't want to know nothing.

FD: Yea - but I gave you two and a half thousand.

Z: Let me tell you something right now - 3500 was the agreement and you - you know just what it was right? Let me tell you something now - I tried to make - uh - uh - reasonable thing with you, and uh 2500 and uh - uh - whatever you wanted to do and if you could afford 175 - 150 - 100 - um - whatever you said - whatever you said - the price you said I went along with you - didn't I do that for you? What more - in other words you want to tie Cisco's money up for a year and then you look to pay them their money back and then you don't want to pay them what they've got coming. What do you think these people are made with a finger. Frank, I'm talking to you like a man - here Frank, take a walk - am I right or wrong? Think of it, be reasonable, be a reasonable person - if you knew you couldn't pay this money, why did you take it?

FD: Yea - well I took the money and I was paying it right? Wait -

Z: One thing don't have to do with another - now you tell me what you want me to tell these people - What do you want me to tell them? You tell me what you want me to tell the, and I'll tell them.

FD: What could I tell you.

Z: I'm asking you, you're the guy who owes all the money.

FD: I don't know what to tell you. I don't know what to tell you - I'm tired of trying to get money that's all I can tell you - what can I tell you? I'm trying.

Z: You're not trying - why aren't you working?

FD: I know I'm not because I can't even afford to pay my own bills.

Z: That's why you're not working.

FD: I haven't got no money.

Z: That's why you're not working. Couldn't it be a good idea to work.

FD: I been trying to work - I been trying to make money. I had a rought time. I went to my sister-in-law with my wife - she doesn't have it - she might have had it then but she doesn't have it now.

Z: How did you get there?

FD: I walked here - I got a pass from the subway - they don't take my passes away - I took the subway and that's it - I got a car - my wife's holding it, my car.

Z: You're afraid to get in a car - You're afraid to get - let me explain something to you. If anything we'll come and get you in the street, that don't mean shit to get in a car - don't be stupid Frank - nobody's looking to do nothing to you - you don't understand this - you gotta know how to talk like a man, you're not a man Frank - you're not a man at all - Nobody is looking to do nothing to you - nobody is gonna hurt you - not like over here you took this man - now - where have you - you took this, you wanted to give him the money or the house.

FD: I don't have a house - I was bullshitting.

Z: You want to pay \$6,000 Frank? You ^{like} to somebody, in other, in other words now you want to go in for 6,000 more in other words.

RG: The way you speak you're better off dead, I'm telling now -

Z: I'll tell you right now, you're better off dead - you don't think so.

FD: What about my wife

RG: Well, you know we're not very interested in anyone else's kids no more - who the fuck are you to swing a deal - you ain't a swinger. You shouldn't that house.

FD: I looked all over for three weeks.

RG: Suppose he would have you the money - you know. You know he's held responsible for that fucking money - you - you - owe him - now you ain't worried about his wife and kids.

FD: (UN)

RG: How could you be worried about it - why didn't you pay him?

FD: I paid him every three weeks - it was like clock work it was like clock work, every week I was-

RG: Yea - but even with that money, you didn't go for 6,000 more -

FD: No - I didn't ask for 6,000.

Z: He's a big man - a big man - don't you understand. You're wrong Frank. You gotta pay - I don't know what to tell you.

FD: I don't know what you want me to do?

Z: Whatever you can do, you do, you got to. You know what I'm saying here, over here gotta be reasonable. I took into consideration for you so many times, you walked out on me, that's the trouble. I mean I should have been a cocksucker with you to fucking force you. You'll have to get a thousand more off Patty anyway. Where's he now?

RG: You'll owe him \$1,000 more then you'll owe Patty a \$1,000. I don't give a fuck where he got to get but he got to get it too.

FD: Patty - Patty's not involved in this.

Z: What was his word when you took the first thousand dollars, what was his words then. 100 percent - the guy is good. I stand by the guy.

FD: No - don't bother Patty.

RG: No good. Then you come up with money -

Z: Don't bother Patty - he's got to be held - well then you come up with the money (UN) what do you think this is \$5 - this is big money big money - you think this money grows on trees? Frank, I understand you're in a jam - you don't hide. You don't go in the house and don't go out and make your wife to tell people that you're not home.

FD: I wasn't home. I wasn't home.

Z: You weren't home for two weeks?

FD: No - I was by my cousin's house trying to make money.

Z: Frank, let me tell you something. No use running away. How did you come up with that phony check? How did you get that phony check?

RG: That check would have bounced.

FD: (UN) I didn't give you the check - I was going to show it to you.

Z: No - no - no, take the check (UN)

FD: (UN) Because I thought for sure they were going to give me a hand.

Z: Be a fucken man and don't lie to me - be a man and don't lie - because you're a fucken liar - I catch you in too many fucking lies already - be a fucken man - people be a man with you if you fucken don't do like that. Don't be a cocksucker cause it don't pay - I'm telling you now.

FD: How much could I pay. In other words you can't afford \$50 a week, right? I'm just asking - how much could you pay back?

Z: I'm gonna go take a thousand off Patty - you gotta pay. Frank you gotta pay.

FD: Then what happens?

Z: You're going to have to owe me money.

Z: What could you afford a week?

FD: I don't know - I didn't get paid yet, I didn't get no pay.

Z: I didn't want to get fucked, you gotta be a man, you gotta be calm - to treat you calm you gotta show good faith, you can't hide, the worst thing in the world - and you want to be a tough guy on top of it - you gotta pay (UN).

FD: What about Patty, I like Patty a lot -

(car radio transmission)

FD: Patty - what - what can you do to uh get out of them before going to Patty.

(radio transmission)

Z: Well, Patty's gotta be held responsible for a thousand anyway -.

FD: Yea, but I want to find out.

(UN)

Z: You don't want to go for a ride - as far as you're concerned, you didn't do nothing wrong - as far as you're concerned you didn't do nothing wrong - what have you got to be afraid of, right?

FD: I've got something to be afraid of.

Z: Oh. Well then in your conscience you must have done something wrong.

FD: (UN)

Z: Didn't you come begging for money. You forgot - think back - Am I right or wrong? Think back, remember how you used to come.

FD: What do we want to do to resolve this thing with Patty?

Z: I'm going to see Patty - I don't want to hear anymore - I don't even want to see you again. You gotta pay me my money. You gotta think what you want to do - I don't want to know nothing. Friends gotta be paid - Patty's held responsible for a thousand dollars. I gave him until Friday - you were supposed to - you told Patty you were going to come up with 2,500 and you didn't - you didn't tell Patty that.

FD: I told him that my wife's sister had it.

Z: Now, I gotta see Patty for a thousand, that's like a thousand back he's gotta pay the money

FD: What do I owe -

Z: Let's come to a settlement here. I told you your balance already - 2,500 - I'll take a thousand off Patty and then you'll owe me 1,500.

FD: Then all you gotta get is 1,500.

Z: You'll have to pay me every week. I heard Patty was doing pretty good. I heard you and him were partners.

FD: Yea, I wish I was Patty's partner whatever he did, he did on his own. I owe the Bankers Trust - I owe fucken National City Trust.

Z: What happened to your money?

FD: Gambling at the race tracks - trying to make up money that I don't even have.

Z: What could you afford a week?

FD: I don't know.

Z: What could you afford a week? I'm asking you now.

FD: \$15 a week - huh.

Z: Make it 25.

FD: What happens one week when I don't have the money?

Z: You don't got it, come. You come whether you got it or not, you tell me. Don't go hide like a fucker - be a man - you got two kids over here - be a fucken man - how you gonna show your kids a way - bring your kids up - Frank, I don't think you understand you can't go borrow money from people and never expect to pay them. You know what I'm saying? I that - what could you afford, 25 a week?

FD: I'll try, I just want to get credit for a couple of weeks that's all. (UN)

Z: I want to tell you now - come up with 20-25 a week until you get on your feet - when you get on your feet, then you'll tell me, you'll see what you can pay. That being fair?

FD: Yea.

Z: I don't want to see you get hurt. I don't want to see no contact.

Z: What's the matter Frank - heart attack maybe? Take a lesson you pay - when are you going back to work? You can't go back because you owe all kinds of money in there too. What do you tend to do? How - how - how the hell you gonna - how you gonna square your debts?

FD: What's wrong?

Z: You don't know - you don't care then - in other words - don't tell me you aren't better off dead - because what about your wife and kids -

RG: What fucking good is your life (UN).

FD: (UN) if I could just hang in.

RG: (UN) you got a car? Why don't you drive for a car service?

FD: (UN)

Z: What are you gonna do?

FD: I'm going to start pay you back - um - I'll see ya when - Monday?

Z: (UN)

FD: (UN) I don't know what you want me to do - I don't know what to say - I didn't go to work - what I'm gonna get

FD: over there, I don't know if I'm gonna have my job there or not.

Z: Why don't you go in now? Why not?

FD: I can't, I can't work nights.

Z: Why, why don't you want to go into your job? Are you afraid to go in? Why are you afraid to go in?

FD: I owe too much fucken money.

Z: You keep putting it higher and higher is that right? (UN)

FD: (UN) that kind of money in there - the money I owe out in there is like \$20 to all my good friends - \$20.

Z: And you owe out 1,700 to another guy and you owe out 2,000 to another guy and you owe like 700 to another guy like four you hear that?

FD: That ain't true - (UN) there isn't one in there that has \$5.

Z: Let me tell you something - go in there like a man (UN) sit down with everybody you owe money to and settle up. Say - look if I don't work I ain't gonna get paid - I'm gonna come to work - sooner or later - wouldn't that be better then do what you're doing?

FD: Yea.

Z: (UN) want me to come there and be with you - huh - (UN) well, what else can I tell you? You don't earn you ain't gonna make no money - you ain't gonna put no food on the table - how you feedin your kids?

FD: (UN)

Z: You mean to tell me if this is not the position your in there ain't nobody to help you out?

FD: (UN)

Z: (UN) they don't want to help?

Z: (UN) Can't you see the kind of guy he is - see (UN)
what kind of guy he is?

FD: I don't have the type of family you can go after
money with other words - (UN)

Z: Big man. Multimillionaire. What is your
uncle - (UN).

FD: (UN) - that's not my uncle (UN) I'm the one
(UN) - All I know is that I can get \$20 to \$25 a
week - right? Friday - three o'clock - right.
We'll meet by then.

Z: You pay up uh - I gotta go see Patty now.

FD: (UN)

Z: You gotta (UN).

FD: Friday.

Z: Got to work. Start going to work. Don't start telling
me lies that the worst thing in the world you can do -
you hear what I'm telling you? Be a man and act like
a man and you get treated like a man be a cocksucker
and you get treated like a cocksucker (UN) take you
two fucken years - try to work at that until you can
get on your feet this guy

RG: He's the type of guy that if he gets on his feet still
won't give you no money - that type and guy you know
what I mean?

Z: Don't tell me your not doing the right thing. (UN).

RG: You gotta - Frank you have to understand one thing.
I thing you know about it. You know he's responsible
for a lot of money. That he's - that you've got.
That you (UN) you understand. What's he supposed to
do. He's gotta go make the money so that he can let you
off the hook and you gonna take two years to pay him -
you understand.

FD: I never uh I always thought it was just his money.

RG: Oh now it's just like uh you think, it's his money
that's why you don't have to pay, that what you think.

FD: No. That's not what I said. Your saying. I'm not saying. That - I'm just saying something else (UN).

RG: You always thought is was his money.

FD: I thought.

RG: You got some fucken trick.

FD: I thought this money in a way that that (UN). In other words you gotta pay somebody else - is that right.

Z: That's right. What do I tell these people. Give them your address. I that what I tell them. You gotta you gotta phone you don't want to give me your phone number. You're lookin to die.

FD: It ain't that - I don't want my wife to be picking up the damn phone and gettin calls. People call her and everything - uh- and all that. That's too much. It's too much pressure see it isn't his fault. My wife shouldn't be stuck with it - in other words -

Z: In other words I gotta suffer - my wife is gotta suffer for it. My wife and kids gotta suffer, right? You dirty cocksucker. My wife and kids are going to suffer right? Long as you, you don't suffer, right.

FD: I didn't say that - you asked about my phone number - the reason why because I didn't wasn't to uh be bothered with uh.

Z: Your lucky your dealing with me. Your lucky your dealing with me. You know what I do now. Gonna be a cocksucker. I going to wash my hands of the whole matter (UN) go ahead I don't know what to tell you Frank.

FD: Oh. I want to explain one thing about my phone.

Z: This money is coming out of my mouth. Don't forget it. Coming out of my mouth. To let you off the hook. (UN). You (UN) cocksucker (UN) be here Friday (UN).